IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 7639 of 1999

For Approval and Signature:

HON'BLE MR JUSTICE KS JHAVERI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 of any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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GSRTC - Petitioner(s)

Versus

JAYANTILAL DEVJIBHAI SOLANKI - Respondent(s)

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Appearance :

MR HS MUNSHAW for Petitioner No(s).: 1.

MR BA VAISHNAV for Respondent No(s).: 1.

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CORAM :HON'BLE MR JUSTICE KS JHAVERI

Date : 21/06/2005

ORAL JUDGMENT

1. This petition is directed against the order dated 18th February, 1999 passed by the Labour Court, Ahmedabad in Reference [LCA] No. 793 of 1987, whereby the Labour Court has directed the petitioner Corporation to reinstate the respondent workman in service on his original post with

continuity of service and shall make the payment of 50% of the back wages by way of counting 20 days of average attendance and has further directed that if there is delay in making the payment of back wages, the same shall be paid with 18% interest.

2. The short facts of the case are that in the year 1981 the respondent workman was purely working on temporary and ad-hoc basis as Off Day Reliever Watchman. The respondent workman was terminated from service vide order dated 1st August, 1986, on the ground that the respondent workman had not worked for 240 days in a year.

2.1. Being aggrieved by the order of dismissal, the respondent workman raised an industrial dispute which was ultimately referred to the Labour Court, Ahmedabad for adjudication. The Labour Court after considering the case of merits, allowed the Reference with the aforesaid directions. Hence, this petition.

3. Mr. Munshaw learned advocate for the petitioner Corporation has contended that the Labour Court has erred in not considering the fact that the respondent workman was working purely on temporary and ad hoc basis as Off Day Reliever Watchman in absence of regular employees and that he had not worked for 240 days in a year during the period from 1981 to 1986. He has further submitted that Labour Court ought to have appreciated the fact the petitioner Corporation has not violated any of the provisions of the Industrial Disputes Act, including the provisions of Sections 25-F, in view of the fact that the respondent

workman had not worked for 240 days in any of the years. Mr. Munshaw has further submitted that though the respondent workman was a daily wager, the Labour Court has granted 50% back wages.

4. Mr. Vaishanav learned advocate for the respondent workman has submitted pursuant to the order dated 31st May, 2000, the respondent workman has been reinstated in service with effect from 2nd June, 2000 and at present he is working as a Watchman.

5. I have heard the learned advocates for the respective parties and have perused the relevant materials on record. While admitting the matter, this Court had stayed the impugned order. Now that since the workman has been reinstated in service, I am of the opinion that the petitioner Corporation has accepted the award with regard to reinstatement. Therefore there is no dispute with regard to reinstatement. Now, since the respondent workman has been reinstated in service, he shall be granted all the benefits under the Settlement and/or the Regulations of the Petitioner Union and the Management and shall be allowed to continue to work as a Watchman.

5.1. The question with regard to grant of back wages is concerned, I am of the opinion that the Labour Court has committed error in granting 50% back wages *inasmuch* as the respondent workman was working purely on temporary and ad hoc basis. Apart from that he has not completed 240 days in a year. Thus, the order with regard to back wages is required to be quashed and set aside. Even otherwise, in

view of the principle laid down by the Apex Court that the workman is entitled for wages if he has worked and, therefore, the Labour Court ought not to have granted the back wages.

6. In the result, the petition is partly allowed. The impugned order dated 18th February, 1999 passed by the Labour Court, Ahmedabad in Reference [LCA] No. 793 of 1987, is modified to the extent that so far as the direction with regard to reinstatement is concerned, the same is confirmed, in view of the fact that pursuant to the order dated 31st May, 2000, the respondent workman has been reinstated in service w.e.f. 2nd June, 2000 and so far as the direction with regard to back wages is concerned, the same is quashed and set aside. Rule is made absolute to the aforesaid extent with no order as to costs.

[K.S. JHAVERI, J.]

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